wise to leave uncared for by the State. The Bill has been drawn up with the greatest regard to the feelings of the different religionists in Travancore. It is a small Bill containing only a few simple provisions. I will not however trouble the Council now with the details of those provisions, as they will receive your attention later on, the principle of the Bill alone being the subject-matter of consideration now.

The main object is only to appoint an Officer, by the name of his office, who is a *Corporation sole* corresponding to the Official Trustees of Charitable Funds in England and to the Treasurer of Charitable Endowments in British India. I have only to add that the Bill is based upon the British Indian Act VI of 1890, and is intended to be a *permissive* measure to enable Government to take action whenever required.

With these remarks, I move that the principle of the Bill be affirmed by the Council.

The Council having affirmed the principle of the Bill, Mr. Nagam Aiya proposed that the Bill be referred to a Select Committee consisting of Messrs. Govinda Pillai, Rajaram Row, Ramier, John and the Mover, to report within three months.

Seconded by Mr. Mahadeva Iyer.

Carried.

STAMP BILL.

Mr. Kesava Pillai.—The Report of the Select Committee on this Bill and the Bill as amended by them have been duly published in the Gazette and circulated. I beg therefore to move that the Bill be taken up for consideration.

Seconded by Mr. Mahadeva Iyer.

The motion was put and agreed to.

Section 2.

Mr. Mahadeva Iyer.—I beg to propose that the word "and" in line 2 be omitted and the words "and section 35 of Regulation I of 1063" inserted before "are" in line 4 of this section. Section 35 of the Indian Companies Act VI of 1882 which has been introduced *mutatis mutandis* into Travancore by Regulation I of 1063 fixes the amount of stamp duty which shall be charged on every share warrant. This matter is sought to be governed by Article 59 of the Schedule to the Bill. In the list of enactments repealed which is given in Schedule II of the British Indian Act, (II of 1899), section 35 of the Indian Companies Act has also been put in. Hence the amendment.

Seconded by Mr. Govinda Pillai.

Carried.

Section 3, clause (4).

Mr. Sesha Aiyar.—I beg to propose that the following be substituted for section 3 (4):—

"'Bill of lading' includes a 'through bill of lading,' but does not include a mate's receipt."

The amendment proposes to adopt the wording of the British Act. In Act I of 1879 which is the basis of our present Stamp Regulation, a 'bill of lading' was defined as 'any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of the goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated.' Section 3 (34) states that "'vessel' means 'anything made for the conveyance, by water, of human beings or property.'" Thus, a bill of lading as originally defined would not cover the case of a contract to transport goods by land, or partly by land and partly by water. To get over this difficulty the British Indian Legislature has purposely departed from the definition given in Act I of 1879 and has defined it as we now find it in section 3 (4) of Act II of 1899. A 'Bill of lading' is generally

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understood by the mercantile community and it is therefore unnecessary to restrict its signification by giving it a particular definition.

Mr. Ramier.—I beg to second the amendment. The definition which is now sought to be substituted and is taken from the British Indian enactment is one not intended to be exhaustive but only illustrative. To give the term a particular meaning would defeat the object which the Legislature had in view inasmuch as anything which could not be brought within the four corners of the definition would have necessarily to be excluded notwithstanding that it may, according to common acceptation and mercantile usage, come within its scope.

Mr. Kesava Pillai.—I beg to oppose the amendment. The definition of 'bill of lading' as it stands is fuller than the definition given in the British Act. There is nothing inconsistent between the first portion of the definition and the second portion beginning with the word 'includes'. No reason is given in the discussions on the Bill in the Viceregal Council for omitting the definition altogether. The term 'bill of lading' though it may be understood by the mercantile community is one that is not generally understood by the people at large and as such it is necessary that it should be defined fully.

The amendment was then put to the vote and carried by a majority.

Section 3, clause [5 (*b*)].

Mr. Mahadeva Iyer.—I beg to move that the words "whether or not" in para (*b*) be omitted. These words do not occur either in the British Act I of 1879 or in the later Act II of 1899. Although instruments under para (*b*) of this clause may be viewed also as promissory notes under clause (21), the British Indian Legislature has thought it best to treat promissory notes, if attested, differently from ordinary promissory notes as the attestation obviously gives them an increased value.

Seconded by Mr. Vieyra.

Mr. Kesava Pillai.—I am not for the amendment. A properly executed bond even if not attested would be accepted by the Courts. If so, I do not see any reason why instruments not attested falling under para (*b*) should not also be treated as bonds and charged as such.

Mr. Govinda Pillai.—I am in favor of the amendment.

The amendment was then put to the vote and carried by a majority.

Section 3, clause [5 (*c*)].

Mr. Sesha Aiyar.—I beg to propose that the words 'whether or not' in para (*c*) of clause (5) be also omitted. This would make the wording of the whole clause correspond to the wording of the British Act.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 3, clause (*6*).

Mr. Sesha Aiyar.—I beg to move that the words "it means" in line 7 of this clause be omitted. The amendment is purely verbal.

Seconded by Mr. Ramier.

Carried.

Section 3, clause (*14*).

Mr. Sesha Aiyar.—I beg to propose that the words "or any Civil Court" in line 8 be omitted. The definition of "Instrument of partition" as given in this clause is the same as that given in clause (5) of section 2 of Act II of 1899. The British Indian Legislature recognizing the principle laid down in the Privy Council case of *Chidambaram Chettiar V. Gauri Nachiar*, I. L. R. 2, Mad. 83 as to the effect of a decree for partition has added the words "or any Civil Court" in the definition, probably under the impression that people evade the stamp-duty payable on a partition

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deed by resorting to the civil courts for partition. I submit that this view ignores the fact that people have to pay institution fees when they resort to the civil courts. To compel them to pay stamp-duty in addition is, I think, unjust. This view has been strongly urged in an article in the Madras Law Journal, Volume VII, at p 470 and 471. To adopt the British Indian definition here would be to work great hardship as, under the Court Fees Regulation in force in Travancore, institution fees have to be paid on the market value of the subject-matter of the suit, in every case.

Mr. Ramier.—I beg to second the amendment and I agree with my learned friend in the very cogent reasons given by him in support of it. Under the law obtaining in British India there is a fixed fee for partition suits in respect of joint property. On the other hand, we pay *ad valorem* fees here in every case. Thus the reasons, if any, that exist in British India for having the words "or any Civil Court" do not hold good here.

Mr. Kesava Pillai.— I agree to the amendment.

Carried.

Section 3, clause (15A).

Mr. Mahadeva Iyer.— I beg to propose that after clause (15) the following definition be inserted as clause (15 A.) :—

"'Marketable security' means a security of such a description as to be capable of being sold in any stock market in Travancore, British India or the United Kingdom".

This definition is taken from the British Indian Act XV of 1904 which has been recently passed amending Act II of 1899. The Select Committee to which the Bill which was subsequently passed as Act XV of 1904 was referred say that "this definition of 'marketable security' is on the lines of that contained in section 122 of the Stamp Act, 1891 (54 and 55 Vic. c. 39) the need for which, in connection more especially with the new section 23 A, has been urged in various quarters." I think that this definition may be adopted with advantage and would therefore move the amendment.

Seconded by Mr. Rajaram Row.

Carried.

Section 3, clause [22 (d)].

Mr. Sesha Aiyar.—I beg to propose that the words "and whether the same is or is not signed with the name of any person" in para (*d*) of this clause be made a separate para. This is necessary as these words are intended to govern the whole section.

Seconded by Mr. Kesava Pillai.

Carried.

Section 3, clause (23).

Mr. Mahadeva Iyer.—I beg to move that the following words be added at the end of the definition of "Settlement" :—

"and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition".

This amendment is also taken from Act XV of 1904. The reason for it is best explained in the words of the Select Committee. This addition is made "with the object of preventing the evasion of the stamp-duty imposed on settlements which is at present effected by the simple expedient of first making an oral disposition of the property to be settled and then recording the terms of the disposition in a declaration of trust in which the settlor and the trustees join. Such an instrument is only chargeable with a stamp-duty of Rs. 15 under Article 64 (Declaration of Trust) instead of with the heavier duty imposed by Article 58 (Settlements.) The proposed addition to the definition will have the effect of requiring such instruments in future to be stamped

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as settlements." I trust the Council will see the force of these remarks and agree to the amendment.

Seconded by Mr. Nagam Aiya.

Carried.

Section 5, Proviso.

Mr. Sesha Aiyar.—I beg to propose that the words "Our Government" be substituted for "the Sirkar" in line 4 and in line 5 of the proviso to this section.

Seconded by Mr. Ramier.

Carried.

Section 9, sub-section (4).

Mr. Sesha Aiyar.—I beg to propose that the word 'is' be inserted between 'sea-insurance' and 'made' in line 1. The amendment is purely verbal.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 10, clause (a).

Mr. Sesha Aiyar.—I beg to propose that the words 'or cancel or vary such order to the extent of the powers hereby given' in lines 11 and 12 be omitted. Section 14 of the General Clauses Regulation II of 1072 enacts that "where a Regulation confers a power to make any rules or by-laws, or to issue orders, the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, by-laws or orders.' I therefore think these words in the section may be omitted.

Seconded by Mr. Mahadeva Iyer.

Carried.

Section 17.

Mr. Mahadeva Iyer.—I beg to propose that the words 'by endorsement under the hand of the Division Peishcar or registering officer or' be inserted between 'instrument' and 'in' and the word 'other' between 'such' and 'manner', in line 12 of this section. This amendment is taken from the British Act which contains a similar provision and provides a ready method of denoting duty upon instruments.

Seconded by Mr. Rajaram Row.

Carried.

Section 19, clause (2).

Mr. Sesha Aiyar.—I beg to propose that the word 'instrument' be substituted for 'instruments' in line 1 of this clause. This is purely a verbal amendment.

Seconded by Mr. Ramier.

Carried.

Section 24 A.

Mr. Mahadeva Iyer.—I beg to move that the following be added as a new section, after section 24:

"24 A. (1) Where an instrument (not being a promissory note or bill of exchange)—

(*a*) is given, upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt; or

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(*b*) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security;

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (*b*) of the Schedule.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty."

This amendment is also taken from the recent Stamp Amendment Act of British India. The reasons for introducing this provision are thus explained in the Statement of Objects and Reasons:

"The attention of the Government of India has been directed to the ruling of the Calcutta High Court in the case of the *Queen Empress* v. *Debendra Krishna Mitter* (1900), I. L. R., 27 Cal. 587 to the effect that, unless the whole advance given under an equitable mortgage be made at the time that the instrument of hypothecation is executed, the stamp must be that of an ordinary mortgage. This decision imposes a much heavier duty on equitable mortgages than appears to have been intended; for it follows from it that the higher duty chargeable on an ordinary mortgage is leviable whenever it is sought to secure by deposit of title-deeds future advances on an existing account. Such a duty is, in view of the temporary nature of transactions of the kind indicated, excessive, and the fact that it is leviable must tend to retard the development of the system of cash credits, which have hitherto proved of great assistance to trade. It is therefore proposed—*see* clause 6 of the Bill—to amend Article No. 6 of the First Schedule to the Indian Stamp Act, (II of 1899), so as to relieve these instruments from the higher duty, and to place them all on the same footing, whether their execution is or is not simultaneous with the advances secured by them; and it is at the same time suggested—*see* clause 3—to follow section 23, read with section 86 (2) of the English Stamp Act of 1891 (54 and 55 Vict. c. 39) and to levy a fixed fee of eight annas only when the security deposited by way of equitable mortgage is marketable."

I therefore beg to propose the amendment for adoption.

Seconded by Mr. Rajaram Row.

Carried.

Section 25.

Mr. Sesha Aiyar.—I beg to propose the following amendments to this section:—

1. Insert the words 'in respect whereof no duty has already been paid' between 'incumbrance' and 'any' in line 3 of the Explanation;

2. In the last proviso, omit 'to the mortgagee' and substitute 'the transferee' for 'he' in line 3;

3. Place the proviso before the Explanation and insert 'also' between 'Provided' and 'that;' and,

4. Omit Illustration (2).

The principle of all these amendments is the same viz. that there should be no distinction between a stranger purchaser and a mortgagee purchaser. When property is mortgaged, the Government gets the value of the stamp on the mortgage amount in the first instance and when a sale is executed subject to the incumbrance, to make the mortgage amount also a part of the consideration for the purpose of levying stamp-duty, is unjust. This principle viz. the injustice of levying stamp-duty afresh on the same amount has been recognized in the proviso, in favour of a mortgagee purchaser and I submit that the same reason holds good also in the case of a stranger purchasing subject to a mortgage. Hence the amendment.

Mr. Ramier.—I second the amendment. I also think that the concession granted to the mortgagee should be extended to a third party purchasing subject to the mortgage.

Mr. Govinda Pillai.—I oppose the amendment. The question is 'what is it that is sold'? It is certainly the property that is sold and the duty must be paid on the whole consideration whoever may share in the sale amount.

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Mr. Kesava Pillai.—I am against the amendment proposed as it practically cancels the principle of the section.

After some further discussion, the amendment was put to the vote and lost.

As it was now 5-20 P. M. and there were a number of important amendments still to be considered, the Council adjourned to 8 A. M. on Monday the 19th December 1904.

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